

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CRIMINAL ACTION NO. 5:22-CR-00060-KDB-SCR**

UNITED STATES OF AMERICA,

v.

**MICHAEL ELLIOT KOHN,
CATHERINE ELIZABETH
CHOLLET, AND
DAVID SHANE SIMMONS,**

Defendants.

ORDER

THIS MATTER is before the Court on Defendants Michael E. Kohn and David S. Simmons' Joint Motion to Stay (Doc. No. 108).¹ The Court has carefully considered this motion and the parties' briefs in support of their respective positions and for the reasons briefly discussed below, the Court will **DENY** the motion as moot.

On December 27, 2023, the Court entered an Order ("Order") addressing the parties' pre-trial motions. Doc. No. 95. In the Order, the Court granted the Government's Motion to Compel Disclosure of Reliance on Advice of Counsel and directed the Defendants to provide both notice of their intent to assert this defense and related discovery by March 4, 2024. Doc. Nos. 71, 95. Kohn and Simmons timely filed interlocutory appeals challenging only that portion of the Order in early January 2024. Approximately one month later, they filed the Joint Motion to Stay now before this Court.

¹ Although not party to this motion, Defendant Catherine E. Chollet does not oppose it. *See* Doc. No. 108 at 3.

In their Motion, Defendants urge the Court to stay the portion of the Order directing Defendants to give notice of whether they intend to assert an advice of counsel defense by March 4, 2024. *See* Doc. No. 108. Defendants further ask the Court to stay all proceedings in this case pending resolution of their appeal to the Fourth Circuit. *Id.* In response, the Government argued that the Court should deny the Motion to Stay because the Fourth Circuit lacked jurisdiction to hear the appeal. *See* Doc. No. 109.

On February 15, 2024, the Fourth Circuit held that it lacked jurisdiction over Defendants' appeal and accordingly dismissed it. Therefore, now that Defendants' appeal has been resolved, the Court will deny Defendants' Motion to Stay as moot. Also, to the extent Defendants independently ask the Court to stay or revise the timing of the notice and discovery required by its Order, the Court declines to do so. Accordingly, Defendants' Motion to Stay is denied and the Order (Doc. No. 95) remains fully in effect.

SO ORDERED.

Signed: February 21, 2024



Kenneth D. Bell
United States District Judge

